

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**JAMES THOR KIRK,**

**Petitioner,**

**v.**

**No. 22-cv-0035 DHU/SMV**

**UNITED STATES OF AMERICA,**

**Respondent.**

**ORDER TO CURE DEFICIENCIES**

THIS MATTER is before the Court on the pro se “Motion Sentencing Consideration Rule 5-801” filed by Petitioner James Thor Kirk on January 14, 2022. [Doc. 1]. The Court construes Petitioner’s filing as a petition for writ of habeas corpus under 28 U.S.C. § 2241. The Court determines that the pro se Petition is deficient, as follows:

(1) Petitioner has not paid the \$5 filing fee or filed an Application to Proceed in the District Court Without Prepaying Fees and Costs; and

(2) the pro se Petition is handwritten and is not in proper federal form. Petitioner’s Motion is brought under a New Mexico state rule of procedure and asks for his immediate release “to prevent the avoidable transmission of COVID-19, reduce public health costs, and reduce the risk of a broader health emergency in the community in which Defendant’s correctional facility is located.” [Doc. 1] at 1. Because Petitioner challenges conditions of his confinement, the Court construes Petitioner’s filing as a request for habeas corpus relief under § 2241. *See Preiser, Correction Commissioner v. Rodriguez*, 411 U.S. 475, 484 (1973); *Brace v. United States*, 634

F.3d 1167, 1169 (10th Cir.2011). Petitioner's Motion is not in proper form for a proceeding under § 2241.

Petitioner must cure the deficiencies if he wishes to pursue his claims. The deficiencies must be cured within 30 days of entry of this Order. Petitioner must include the civil action number, 22-cv-0035 DHU/SMV, on all papers he files in this proceeding. If Petitioner fails to cure the deficiencies within 30 days, the Court may dismiss this proceeding without further notice.

**IT IS ORDERED** that, within 30 days of entry of this Order, Petitioner James Thor Kirk cure the deficiencies by (1) paying the \$5 filing fee or submitting an Application to Proceed in the District Court Without Prepaying Fees and Costs and (2) filing a petition for writ of habeas corpus under 28 U.S.C. § 2241 in proper form.

**IT IS FURTHER ORDERED** that the Clerk of the Court is directed to mail to Petitioner, together with a copy of this order, (1) two copies of an Application to Proceed in the District Court without Prepaying Fees and Costs under 28 U.S.C. § 1915, with instructions, and (2) a form petition for writ of habeas corpus under 28 U.S.C. § 2241, with instructions.

**IT IS SO ORDERED.**



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**STEPHAN M. VIDMAR**  
**United States Magistrate Judge**